

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK
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5 - - - - - X
6 UNITED STATES OF AMERICA) 20CR6074
7)
8 vs.
9 THEODORE LORIA, Rochester, New York
10) November 16, 2020
11 Defendant. 11:00 a.m.
12 - - - - - X

9 **SENTENCING**

10 **All parties appeared by the Zoom for Government Platform**

11 TRANSCRIPT OF PROCEEDINGS
12 BEFORE THE HONORABLE ELIZABETH A. WOLFORD
13 UNITED STATES DISTRICT JUDGE

14 JAMES P. KENNEDY, JR., ESQ.
15 United States Attorney
16 BY: MELISSA MARANGOLA, ESQ.
17 Assistant United States Attorney
18 100 State Street
19 Rochester, New York 14614

20 MARK FOTI, ESQ.
21 402 Amherst Street
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23 Appearing on behalf of the Defendant

24 J. FISH, USPO

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11:02:29 2

11:03:46 3 THE CLERK: We're here in the matter of the
11:03:47 4 United States versus Theodore Loria, 20CR6074. And,
11:03:53 5 Judge, we do have some nonparties participating as well
11:03:57 6 by audio only.

11:03:58 7 THE COURT: And Karen is on?

11:04:00 8 THE CLERK: She is.

11:04:01 9 THE COURT: Good morning, everybody.

11:04:03 10 MS. MARANGOLA: Good morning, your Honor.

11:04:05 11 THE COURT: Anybody that is not speaking if
11:04:06 12 you two just mute yourself, so in other words, the
11:04:10 13 attorneys and Mr. Loria, obviously should not be muted,
11:04:15 14 but everybody else, if you could mute yourself, that
11:04:18 15 would be helpful.

11:04:19 16 We're here in the matter of the United
11:04:21 17 States versus Loria. I'm going to first state on the
11:04:26 18 record who is appearing on behalf of each party. Ms.
11:04:29 19 Marangola, you're appearing on behalf of the government?

11:04:31 20 MS. MARANGOLA: Yes, your Honor.

11:04:32 21 THE COURT: And Mr. Foti on behalf of the
11:04:35 22 defendant?

11:04:36 23 MR. FOTI: Yes, your Honor.

11:04:37 24 THE COURT: And Mr. Loria, can you hear me
11:04:40 25 okay?

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11:04:41 2 THE DEFENDANT: Yes, ma'am.

11:04:42 3 THE COURT: And for the record, you are
11:04:45 4 Theodore Loria?

11:04:46 5 THE DEFENDANT: Yes, ma'am.

11:04:47 6 THE COURT: And you're represented by Mr.
11:04:49 7 Foti?

11:04:50 8 THE DEFENDANT: Yes, ma'am.

11:04:50 9 THE COURT: All right. Mr. Loria, before we
11:04:53 10 do anything else, the first question I want to ask is
11:04:57 11 whether or not you're medically able to go forward. We
11:05:02 12 are supposed to have this sentencing a few weeks ago and
11:05:05 13 I know you had some medical issues and you were on some
11:05:09 14 medication that Mr. Foti indicated were impacting your
11:05:12 15 ability to understand what was happening. Are you able
11:05:16 16 to go forward this morning?

11:05:17 17 THE DEFENDANT: Yes, ma'am. But I'm
11:05:19 18 currently still on nerve medication for my nerves on the
11:05:23 19 left side of my body, but I'm able to go.

11:05:29 20 THE COURT: I missed the last part of what
11:05:30 21 you said.

11:05:31 22 THE DEFENDANT: I'm okay to go forward.
11:05:33 23 They still have me on some nerve medication regarding my
11:05:40 24 nervous system.

11:05:41 25 THE COURT: Is that medication impacting

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11:05:42 2 your ability to understand things?

11:05:44 3 THE DEFENDANT: No, ma'am.

11:05:45 4 THE COURT: I think previously you were on
11:05:47 5 some medication for shingles; you were on prednisone.

11:05:51 6 THE DEFENDANT: Yes.

11:05:52 7 THE COURT: Are you still on that?

11:05:53 8 THE DEFENDANT: No, ma'am.

11:05:54 9 THE COURT: So you're able to go forward
11:05:56 10 this morning?

11:05:57 11 THE DEFENDANT: Yes, ma'am.

11:05:57 12 THE COURT: All right. The second thing I
11:06:04 13 need to do, I need to make sure you consent to
11:06:07 14 proceeding by Zoom, the video we're doing. As you can
11:06:11 15 see, you're appearing by video. Everybody is appearing
11:06:14 16 by video. I'm appearing remotely. I should have noted
11:06:17 17 as well, we have Officer Fish here from Probation. Your
11:06:21 18 attorney, Ms. Marangola, everybody is appearing by
11:06:24 19 video. And I want to explain to you the arrangements
11:06:28 20 that we've made. Because of the COVID-19 pandemic,
11:06:33 21 Congress passed an emergency statute that permits
11:06:36 22 defendants in criminal cases to appear by video for
11:06:39 23 certain types of proceedings under certain
11:06:43 24 circumstances. Now, our normal procedure before this
11:06:46 25 emergency would be to have everybody physically in a

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11:06:50 2 courtroom for any type of proceeding. Because of the
11:06:55 3 health risks associated with people being in a courtroom
11:07:00 4 together and transporting somebody who is in a jail
11:07:06 5 facility, transporting them to the courtroom, we're
11:07:08 6 giving defendants an option if they want to proceed
11:07:14 7 remotely. Now, it's entirely up to you if you want to
11:07:17 8 proceed remotely. If you wanted to, we could move
11:07:21 9 forward and conduct this appearance physically in court.
11:07:26 10 We are conducting court proceedings, Mr. Foti and I, we
11:07:31 11 just wrapped up a two week or so trial that we had over
11:07:34 12 the past couple of weeks where we were all physically in
11:07:38 13 court with jurors and so forth. So if you wanted to
11:07:41 14 proceed in person, we certainly could make arrangements
11:07:45 15 to do that. I want to also point out that because of us
11:07:50 16 proceeding remotely, this impacts, to some degree, the
11:07:57 17 ability of the public to attend this proceeding. Now,
11:08:01 18 we're permitting the public to have audio access to this
11:08:05 19 proceeding. And my courtroom deputy has confirmed there
11:08:08 20 are some members of the public that are participating.

11:08:11 21 I should note for the record that this
11:08:13 22 proceeding may not be recorded or republished in any
11:08:17 23 way. If anyone was to do so, it would be unlawful and
11:08:21 24 may constitute a contempt of court. So let me first ask
11:08:25 25 Ms. Marangola, do you agree with my recitation of the

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11:08:28 2 circumstances under which we're proceeding this morning?

11:08:31 3 MS. MARANGOLA: I do, your Honor.

11:08:32 4 THE COURT: Mr. Foti, do you agree?

11:08:35 5 MR. FOTI: I do as well.

11:08:37 6 THE COURT: Mr. Loria, do you understand
11:08:41 7 that you have the right to be physically present in open
11:08:45 8 court for your sentencing today?

11:08:47 9 THE DEFENDANT: Yes, ma'am.

11:08:48 10 THE COURT: You understand that you have the
11:08:49 11 right to consult with Mr. Foti during the proceeding
11:08:53 12 today. And if you need to do that, let me know and we
11:08:56 13 can make arrangements for the two of you to go into
11:09:00 14 what's called a breakout room and have a confidential
11:09:04 15 communication. Do you understand that.

11:09:05 16 THE DEFENDANT: Yes, ma'am.

11:09:05 17 THE COURT: Do you understand, Mr. Loria,
11:09:06 18 that your family members and other supporters have the
11:09:10 19 right to attend this proceeding if they wanted to?

11:09:13 20 THE DEFENDANT: Yes, ma'am.

11:09:14 21 THE COURT: Have you consulted with Mr. Foti
11:09:17 22 about waiving your right to appear in person and
11:09:19 23 agreeing to proceed by video?

11:09:21 24 THE DEFENDANT: Yes, ma'am. I chose video.

11:09:24 25 THE COURT: Okay. And you have agreed, just

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11:09:27 2 so the record is clear, you're agreeing to waive your
11:09:30 3 right to appear in person and instead agree to be
11:09:33 4 proceed by video?

11:09:34 5 THE DEFENDANT: Yes, ma'am.

11:09:35 6 THE COURT: And do you also agree that to
11:09:38 7 the extent that your right to public access to this
11:09:41 8 proceeding is in anyway impaired, you waive that right?

11:09:47 9 THE DEFENDANT: Yes, ma'am.

11:09:48 10 THE COURT: All right. Ms. Marangola, any
11:09:52 11 reason that you believe I should not accept this waiver?

11:09:55 12 MS. MARANGOLA: No.

11:09:56 13 THE COURT: Mr. Foti, any reason that you
11:09:58 14 believe I should not accept this waiver?

11:10:00 15 MR. FOTI: No, your Honor.

11:10:00 16 THE COURT: All right. I do specifically
11:10:02 17 find that the sentencing today cannot be further delayed
11:10:06 18 without serious harm to the interest of justice.
11:10:09 19 Because a delay could impact the defendant's and the
11:10:12 20 public's right to a timely resolution of this matter and
11:10:17 21 impede the effective administration of justice. I find
11:10:20 22 that Mr. Loria has knowingly and voluntarily waived his
11:10:24 23 right to appear physically and he has knowingly and
11:10:28 24 voluntarily agreed to proceed by video using the Zoom
11:10:33 25 for Government platform. I further find that the

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11:10:35 2 measures taken to provide the public access to this
11:10:42 3 proceeding are reasonable under the circumstances. And
11:10:44 4 that to the extent that the defendant's right to public
11:10:47 5 access to this proceeding is in any way impaired, he has
11:10:51 6 knowingly and voluntarily waived that right. So I will
11:10:54 7 accept Mr. Loria's waiver and we can now proceed with
11:10:57 8 the sentencing.

11:11:00 9 So, let me state, first of all, on the
11:11:03 10 record what I've received and reviewed in connection
11:11:05 11 with the sentencing. I have the Presentence
11:11:11 12 Investigation Report dated August 5th, 2020; Mr. Loria's
11:11:16 13 objections to the Presentence Investigation Report that
11:11:19 14 were filed at docket 35; the defendant's statement of
11:11:24 15 sentencing factors filed at docket 42; and then the
11:11:27 16 statement of the government with respect to sentencing
11:11:29 17 factors that was filed at docket 32.

11:11:33 18 So let me first state on the record, Ms.
11:11:36 19 Marangola, can you confirm for me, first of all, that
11:11:39 20 I've stated everything that was submitted in connection
11:11:41 21 with sentencing?

11:11:43 22 MS. MARANGOLA: That's accurate, yes, Judge.

11:11:44 23 THE COURT: And can you confirm for me that
11:11:46 24 the government received the Presentence Investigation
11:11:49 25 Report?

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11:11:49 2 MS. MARANGOLA: I have, your Honor.

11:11:51 3 THE COURT: And does the government have any
11:11:52 4 objections to the report other than the fact that the
11:11:56 5 calculations are different than what was in the plea
11:11:59 6 agreement?

11:11:59 7 MS. MARANGOLA: No objections, Judge.

11:12:01 8 THE COURT: Okay. Mr. Foti, can you confirm
11:12:03 9 for me that I stated everything that was submitted in
11:12:06 10 connection with sentencing?

11:12:08 11 MR. FOTI: That is correct.

11:12:09 12 THE COURT: And can you confirm for me that
11:12:12 13 you received the Presentence Investigation Report and
11:12:14 14 reviewed it with your client?

11:12:15 15 MR. FOTI: I did.

11:12:16 16 THE COURT: Mr. Loria, can you confirm for
11:12:19 17 me that you reviewed the Presentence Investigation
11:12:21 18 Report with your attorney?

11:12:22 19 THE DEFENDANT: Yes, ma'am.

11:12:23 20 THE COURT: All right. Now, Mr. Foti, you
11:12:25 21 had submitted some objections to the Presentence
11:12:28 22 Investigation Report. Why don't we talk about those
11:12:30 23 right now before we go forward. The first objection is
11:12:36 24 to the inclusion of the restitution letter from Sharon
11:12:42 25 Stiller, the attorney representing the victim, correct,

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11:12:45 2 Mr. Foti?

11:12:46 3 MR. FOTI: Yes.

11:12:47 4 THE COURT: Anything else you want to put on
11:12:48 5 the record about that?

11:12:49 6 MR. FOTI: No, I'll rest on the papers.
11:12:54 7 Obviously, I recognize that the revised final PSR notes
11:13:00 8 the stipulated amount as I think I documented in the
11:13:05 9 objections. It's really to the inclusion of the letter
11:13:09 10 at this point where Ms. Stiller identifies what her
11:13:13 11 legal expenses were and other costs were that she
11:13:17 12 associates as being restitution in this case.

11:13:20 13 THE COURT: All right. Ms. Marangola, the
11:13:22 14 victim has agreed to the restitution figure that has
11:13:25 15 been stipulated?

11:13:26 16 MS. MARANGOLA: Yes, Judge.

11:13:29 17 THE COURT: I'm going to overrule this
11:13:31 18 objection to including the restitution letter. First of
11:13:34 19 all, I think under -- I don't think. I'm finding under
11:13:41 20 Rule 32(i)(3)(B) that a ruling is unnecessary because
11:13:50 21 the restitution figures that Ms. Stiller includes in her
11:13:54 22 letter are not going to impact the sentencing because of
11:13:57 23 the parties' stipulation to the restitution figure which
11:14:00 24 I think is reasonable under the circumstances. I also
11:14:02 25 note under 18 U.S.C. Section 3661, there should be no

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11:14:07 2 limitation placed on the information that I consider in
11:14:10 3 connection with sentencing about the background and so
11:14:14 4 forth. And I think Ms. Stiller's letter is relevant to
11:14:17 5 the extent that she notes this civil litigation that
11:14:21 6 apparently was commenced by Mr. Loria by against the
11:14:24 7 victim that was, sounds like, not only tossed out of
11:14:30 8 court, but there was an injunction issued against Mr.
11:14:33 9 Loria from commencing any further litigation, which is a
11:14:36 10 pretty drastic remedy. And I think that is relevant for
11:14:42 11 me to consider in relation to sentencing. So the
11:14:46 12 objection is overruled.

11:14:47 13 Mr. Foti, you also have an objection related
11:14:50 14 to background information, but I think that has been
11:14:52 15 resolved. Is that correct?

11:14:54 16 MR. FOTI: That is, yes, that is correct.

11:14:58 17 THE COURT: Okay. So then, the outstanding
11:15:02 18 objections relate to including the other arrests in the
11:15:06 19 Presentence Investigation Report. And then the
11:15:09 20 paragraph in the Presentence Investigation Report
11:15:13 21 regarding the inadequacy -- indicating that I could
11:15:18 22 consider the inadequacy of Mr. Loria's criminal history
11:15:24 23 based on his extensive criminal history that doesn't
11:15:28 24 result in any points. Do you want to add anything on
11:15:31 25 the record about that?

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11:15:32 2 MR. FOTI: No. I'll rest on my papers in
11:15:37 3 both regards. Obviously, they are related, the
11:15:40 4 inclusion of other arrests which are ultimately
11:15:44 5 incorporated in the number that the PSR suggests is
11:15:50 6 qualifying for the Court's consideration of an upward
11:15:56 7 departure. I think that they are considered sort of in
11:16:00 8 conjunction with each other and in terms of why we
11:16:04 9 object, I think we laid those out in the paper, but I
11:16:07 10 can answer any questions if the Court has any.

11:16:10 11 THE COURT: No, I don't. I'm going to
11:16:11 12 overrule the objection to the extent you're objecting
11:16:14 13 to, including the other arrests in the PSR. That is
11:16:18 14 clearly something that is relevant and should be and
11:16:23 15 typically is considered. So under 18 U.S.C. Section
11:16:28 16 3661, it's appropriate to include information, not just
11:16:31 17 about convictions, but also about arrests so that a
11:16:35 18 court at least has a full picture of the defendant's
11:16:38 19 background. Now, in terms of the potential upward
11:16:43 20 departure. Obviously, I'm not going to accept the
11:16:47 21 agreed upon 24-month prison sentence then Mr. Loria has
11:16:52 22 the right to back out of the plea agreement. So I think
11:16:55 23 it's really unnecessary to resolve that issue because
11:17:01 24 we're going to address that right now and that is
11:17:04 25 whether or not I should accept the plea agreement. And,

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11:17:10 2 obviously, the parties' plea agreement stipulated that
11:17:22 3 the Court would impose a 24-month prison sentence. If I
11:17:26 4 were to accept that, that would be below the calculated
11:17:30 5 Guideline range that is in the Presentence Investigation
11:17:34 6 Report that nobody is objecting to per se, those
11:17:38 7 calculations in the Presentence Investigation Report
11:17:44 8 because they are correct. I have looked at this case,
11:17:47 9 and for reasons that I will explain further on the
11:17:51 10 record, I would only agree to accept a 24-month prison
11:17:59 11 sentence if I also imposed, as part of a sentence, a
11:18:07 12 supervised release term that includes the six months of
11:18:09 13 home detention as recommended in the Presentence
11:18:13 14 Investigation Report. Now, there was no objection to
11:18:20 15 that in any of the filings. And I don't read the plea
11:18:24 16 agreement as impacting the terms and conditions or the
11:18:27 17 length of a supervised release term, but I guess I want
11:18:31 18 to confirm that on the record with counsel before we go
11:18:35 19 forward.

11:18:37 20 MS. MARANGOLA: That is correct, your Honor.
11:18:39 21 The only agreement is the 24-month imprisonment
11:18:47 22 sentence, meaning in custody. We didn't agree on any
11:18:52 23 restrictions on advocating for a supervised release
11:18:55 24 term.

11:18:55 25 THE COURT: Mr. Foti, do you agree with

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11:18:57 2 that?

11:18:58 3 MR. FOTI: That is correct, yes.

11:19:00 4 THE COURT: Okay. All right. So given that
11:19:04 5 and given the fact that I do have discretion to impose
11:19:09 6 certain conditions and a length of supervised release, I
11:19:13 7 will accept the plea agreement and I will agree to
11:19:16 8 impose a 24-month prison sentence, which would be a
11:19:20 9 below Guideline sentence in this case. And I'll explain
11:19:25 10 my reasoning further as we move forward.

11:19:27 11 With that being said, Mr. Foti is the
11:19:29 12 defendant ready to move forward with sentencing?

11:19:33 13 MR. FOTI: Yes, we are. Mr. Loria, you okay
11:19:36 14 or do you need --

11:19:37 15 THE DEFENDANT: I need to speak to you for
11:19:40 16 one minute. Is that possible?

11:19:41 17 THE COURT: Yes, that is possible. My
11:19:43 18 courtroom deputy should be able to put the two of you
11:19:47 19 into a breakout room. So, keep our fingers crossed and
11:19:52 20 hope that works.

11:19:53 21 THE CLERK: Judge, give me one movement.

11:22:51 22 MR. FOTI: Thank you, Judge.

11:22:51 23 (Whereupon, Mr. Foti and the defendant went
11:22:51 24 off the record to confer.)

11:22:52 25 MR. FOTI: Mr. Loria had a question because

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11:22:54 2 the letter from Ms. Stiller is going to stay in the PSR,
11:22:58 3 he wasn't clear on whether that impacts the stipulated
11:23:02 4 restitution figure. I addressed it with him and I think
11:23:06 5 he understands that it's included as background
11:23:08 6 information and we're ready to go forward with
11:23:10 7 sentencing at this time.

11:23:11 8 THE COURT: Yeah. And to confirm, my plan
11:23:14 9 is to impose restitution in the amount of that was
11:23:18 10 stipulated amount and not to of -- I'm not considering
11:23:25 11 the letter to the extent.

11:23:27 12 THE DEFENDANT: I misunderstood, I'm sorry.

11:23:28 13 THE COURT: That's fine. So are you ready
11:23:31 14 to go forward, Mr. Loria?

11:23:33 15 THE DEFENDANT: Yes, ma'am.

11:23:33 16 THE COURT: Does the government move to
11:23:35 17 sentence the defendant?

11:23:36 18 MS. MARANGOLA: The government so moves,
11:23:37 19 your Honor.

11:23:38 20 THE COURT: Ms. Marangola, anything you
11:23:40 21 would like to say before I sentence Mr. Loria?

11:23:42 22 MS. MARANGOLA: Just very briefly, your
11:23:44 23 Honor. As has been pointed out by the Court, the
11:23:47 24 parties have agreed on a 24-month sentence and a
11:23:50 25 restitution amount of 8,249.70. I'll obviously answer

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11:23:57 2 any inquiry by the Court. I'll note this is a very
11:24:01 3 unusual case. Mr. Foti and I have discussed this case
11:24:05 4 at length to come up with an appropriate resolution. I
11:24:09 5 note I spoke with the victim and met with her multiple
11:24:13 6 times to discuss the outcome. She is really at a point
11:24:17 7 she wants to move on with her life. She didn't want to
11:24:20 8 engage any further in litigation because she didn't want
11:24:23 9 to come face to face with the defendant or fight about
11:24:26 10 it. And as the Court is aware, this charge only carries
11:24:30 11 a maximum sentence of five years imprisonment, which,
11:24:34 12 frankly, is not a lot to work with. So we came up with
11:24:39 13 a resolution that we thought was fair to both parties.
11:24:45 14 With that said, I will be requesting a three-year period
11:24:49 15 of supervised release. The victim in this case is
11:24:51 16 concerned, obviously, when he gets out of prison that
11:24:53 17 she may be contacted again. I'm glad the Court brought
11:24:58 18 up its decision to impose the six-month home
11:25:01 19 incarceration. I think that will provide some solace to
11:25:07 20 the victim in this case. And I would just ask that
11:25:09 21 potentially, not home incarceration, but potentially
11:25:13 22 either a bracelet or something like that be extended if
11:25:16 23 probation thinks it's necessary and the Court thinks
11:25:20 24 it's necessarily beyond that. Other than that, outside
11:25:24 25 of inquiry, I have nothing to add.

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11:25:26 2 THE COURT: Just a couple of points of
11:25:28 3 clarification. The restitution figure is 50 cents or 70
11:25:34 4 cents? I had 50 written down.

11:25:39 5 MS. MARANGOLA: Fifty cents.

11:25:39 6 THE COURT: 8249.70?

11:25:43 7 MS. MARANGOLA: Yes.

11:25:43 8 THE COURT: Do you agree with that, Mr.
11:25:45 9 Foti?

11:25:46 10 MR. FOTI: You might have gotten it from my
11:25:48 11 filings because I have the 50 cents written down, but
11:25:55 12 we're not going to object to the additional 20 cents.

11:26:00 13 THE COURT: Okay. So if we're all in
11:26:02 14 agreement it's 8249.70, right?

11:26:06 15 MR. FOTI: That's fine, yes.

11:26:07 16 THE COURT: And just the proposed special
11:26:10 17 condition in the PSR is home detention subject to
11:26:16 18 electronic monitoring, which isn't as severe as home
11:26:20 19 incarceration. It would allow Mr. Loria to be out for
11:26:24 20 medical appointments and court appearances if necessary
11:26:27 21 and religious services.

11:26:30 22 MS. MARANGOLA: That's fine, your Honor.
11:26:33 23 That's fine.

11:26:33 24 THE COURT: The government is fine with
11:26:35 25 that?

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11:26:36 2 MS. MARANGOLA: Yes. And he is going to be
11:26:37 3 subject to GPS, so we would know he is not in the
11:26:41 4 vicinity of the victim, that is all we care about.

11:26:44 5 THE COURT: Fair enough. Thank you, Ms.
11:26:45 6 Marangola. Mr. Foti, anything you would like to say on
11:26:48 7 behalf of your client before I sentence him?

11:26:50 8 MR. FOTI: Judge, I think I tried to layout
11:26:52 9 in the sentencing statement as carefully as I could the
11:26:58 10 considerations that I think are relevant under 18 U.S.C.
11:27:02 11 3553. I'll just reiterate, Mr. Loria has been emotional
11:27:12 12 throughout this process. And part of that is based on
11:27:15 13 his mental health issues that he has been trying to deal
11:27:19 14 with. Part of it is as I mentioned in the filings sort
11:27:22 15 of the emotional impact of being separated from Blue,
11:27:26 16 his dog, and his general embarrassment and shame that he
11:27:32 17 feels as a result of this. He said, when interviewed in
11:27:36 18 the PSR, that he is ashamed of his actions, and I
11:27:39 19 believe that that is the terminology used. And whether
11:27:43 20 it was or not, that is the terminology used as recently
11:27:47 21 as this morning when we talked about it. I think there
11:27:50 22 are things that he is still working through in terms of
11:27:57 23 the relationship that he was in and the way he responded
11:28:03 24 to certain things, and it's something that he'll
11:28:06 25 probably always have to work through. But it's

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11:28:09 2 something he has been working hard at since the arrest
11:28:12 3 and continue -- he has demonstrated and indicated a
11:28:16 4 continued commitment to doing so. Twenty-four months is
11:28:21 5 not a short period of time. On the other hand, he also
11:28:24 6 understands that the charge could have carried more time
11:28:28 7 and the important thing for him is focusing on
11:28:33 8 rehabilitation, engaging in treatment, engaging in
11:28:38 9 prescribed medication and doing what he needs to do when
11:28:42 10 released to supervised release and well after that to
11:28:47 11 move on and to stay out of trouble. I can only say in
11:28:51 12 terms of my interactions with Mr. Loria, he has always
11:28:55 13 been respectful to me. I've known him for some time
11:28:59 14 before this. But he has remained respectful even in
11:29:02 15 this situation, no matter how much stress there was. He
11:29:06 16 has, in my opinion, always demonstrated a respect
11:29:10 17 towards the process and towards the parties involved and
11:29:14 18 I think he is somebody who is capable of learning from
11:29:17 19 this and trying to move in the right direction going
11:29:21 20 forward. So we appreciate the consideration given to
11:29:24 21 the plea discussions. We appreciate the consideration
11:29:29 22 the Court has given. We're ready to move forward. I
11:29:32 23 know I did -- I did ask him this morning about whether
11:29:35 24 he would intend to expound upon what he has expressed
11:29:39 25 that he feels shame here. And I think it's hard for him

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11:29:44 2 to talk about this without him becoming emotional, at
11:29:49 3 least as of this morning he indicated that I reiterate
11:29:54 4 that is how he feels. I don't think he intends to speak
11:29:57 5 beyond that about it. That is consistently how he has
11:30:01 6 felt and it still is at this point and he is ready to
11:30:04 7 move forward.

11:30:05 8 THE COURT: Let me ask you a question. You
11:30:08 9 make a reference in your submission of the defendant and
11:30:19 10 Charlie Tan, and Mr. Loria believing that the victim had
11:30:19 11 conspired, I guess, with Mr. Tan to potentially kill Mr.
11:30:24 12 Loria because of the life insurance policy. And I'm
11:30:27 13 having trouble understanding, I guess, the rationale for
11:30:30 14 this because I went and looked at the Northern District
11:30:34 15 of New York to confirm my recollection of that criminal
11:30:39 16 proceeding against Mr. Tan. And as of September 2017,
11:30:43 17 he was incarcerated in Federal Court or in the federal
11:30:48 18 case in the Northern District of New York. And yet the
11:30:53 19 time frame for the harassment here, the cyber stalking,
11:31:01 20 was June of 2017 through August of 2019. So what am I
11:31:06 21 missing?

11:31:08 22 MR. FOTI: So, I think it was to the extent
11:31:10 23 I talked about that I was trying to provide background
11:31:14 24 information into sort of where the inception of this
11:31:19 25 issue begins. And the only reason, I think the only

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11:31:23 2 reason I did that was because I think if the Court is
11:31:28 3 aware of that, the Court can see or make certain
11:31:31 4 determinations as to how some of this behavior was tied
11:31:36 5 to mental health issues as opposed to a visceral
11:31:41 6 reaction to a relationship falling apart. I think that
11:31:48 7 it became clear, maybe not at the inception of the case,
11:31:50 8 but after the cellular extractions were provided, that
11:31:54 9 in terms of the time frame, the beginning of the
11:31:59 10 problematic aspects of this relationship that seems to
11:32:03 11 sort of overwhelm a lot of the behavior that follows the
11:32:07 12 end of the relationship really stems from this situation
11:32:14 13 that took place at Christmas where there was an
11:32:20 14 invitation extended to Mr. Tan to join them for
11:32:25 15 Christmas, which was something rejected by Mr. Loria,
11:32:28 16 and resulted in a pretty aggressive disagreement. That,
11:32:36 17 kind of, plants the seeds for what follows. It's not
11:32:41 18 meant to a justification in any way, and Mr. Loria has,
11:32:44 19 obviously, pled guilty and his intent is to fully take
11:32:49 20 responsibility here. And since that is from his
11:32:53 21 perspective, and I think it's backed up by the evidence
11:32:56 22 that I reviewed, where this sort of starts it seems
11:32:59 23 relevant to at least reference that and mention that
11:33:02 24 being part of what leads to all of this.

11:33:05 25 THE COURT: This was Christmas of 2016?

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11:33:11 2 MR. FOTI: Yes, yes.

11:33:12 3 THE COURT: All right. Thank you, Mr. Foti.

11:33:14 4 Mr. Loria, the law allows to you address me
11:33:16 5 before I sentence you. Is there anything that you would
11:33:19 6 like to say?

11:33:20 7 THE DEFENDANT: Yes, ma'am. Regarding my
11:33:22 8 supervised release for the three years, if you could
11:33:26 9 order that I have the ankle monitor on me for the entire
11:33:31 10 three years because people like to lie on me, and so
11:33:35 11 that would, if somebody lied and said I was somewhere I
11:33:39 12 wasn't supposed to be, that would show exactly where I
11:33:42 13 was. My sister will pay for that three-year cost of
11:33:46 14 having that bracelet on me. I would ask you to order
11:33:49 15 that I be monitored for the three years of supervised
11:33:53 16 release with the GPS, which my sister will pay for. So
11:33:57 17 if anybody makes a lie up and says I was somewhere where
11:34:01 18 I wasn't, that GPS will corroborate I wasn't there.

11:34:06 19 THE COURT: Well, Mr. Foti, what is your
11:34:08 20 position on that?

11:34:09 21 MR. FOTI: Judge, it wasn't something Mr.
11:34:11 22 Loria and I spoke about before today. I guess I
11:34:16 23 understand where he is coming from. If the Court is
11:34:20 24 going to order six months of home detention with the
11:34:22 25 ankle bracelet, my request would be impose that, and I

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11:34:27 2 can speak to Mr. Loria and he can speak with his
11:34:30 3 probation officer, I guess, if there is an extent to
11:34:33 4 extend the electronic monitoring, although it would be
11:34:34 5 unusual for the defendant to make that request, I think
11:34:40 6 we can make that request at that time. I would rather
11:34:43 7 proceed with the six months of home detention with
11:34:47 8 electronic monitoring. I don't dispute anything Mr.
11:34:50 9 Loria is asking for. I think it's a request that we can
11:34:55 10 make later after he has gotten out and he receives
11:34:58 11 treatment and we evaluate where things are.

11:35:01 12 THE COURT: Mr. Loria, the way GPS
11:35:05 13 monitoring works, I'm going to put you on home detention
11:35:08 14 initially, which means you won't be able to leave the
11:35:11 15 house unless specifically authorized by probation and is
11:35:14 16 within the scope of the authorized terms. I'm going to
11:35:17 17 -- to do that for three years doesn't make sense, and
11:35:20 18 then maybe put you on a curfew for three years, I think
11:35:26 19 I agree with Mr. Foti, it's probably best, let's see how
11:35:30 20 it goes once you're released. And if you want to make a
11:35:33 21 request to extend it and everybody is in agreement on
11:35:35 22 that and you're willing to pay for it, then we can deal
11:35:39 23 with it when that happens.

11:35:42 24 THE DEFENDANT: Thank you. Other than, as
11:35:43 25 Mr. Foti said, I'm ashamed of my actions. I handled the

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11:35:47 2 situation wrong. I should have handled it extremely
11:35:50 3 different.

11:35:51 4 THE COURT: Okay. Thank you, Mr. Loria.

11:35:53 5 THE DEFENDANT: Thank you, ma'am.

11:35:54 6 THE COURT: I am prepared to sentence you in
11:35:55 7 that regard. As I indicated, I have had an opportunity
11:35:58 8 to review the Presentence Investigation Report as
11:36:01 9 revised August 5th, 2020, as well as all of the other
11:36:06 10 submissions to which I previously referred. I carefully
11:36:09 11 reviewed all of the submissions. I listened carefully
11:36:12 12 to all of the comments that have been made here today as
11:36:16 13 well as considered the victim's statements contained in
11:36:18 14 the Presentence Investigation Report.

11:36:21 15 So, you're 53 years old, Mr. Loria. And
11:36:24 16 you're being sentenced after pleading guilty to cyber
11:36:28 17 stalking in violation of 18 U.S.C. Section 2261A(b)(2)
11:36:37 18 and (b)(5) or 2261(b)(5). This is considered a class D
11:36:40 19 felony. The maximum sentence that I can impose is five
11:36:44 20 years in prison, a \$250,000 fine and up to three years
11:37:05 21 of supervised release.

11:37:05 22 Now, on June 3rd, 2020, you appeared by
11:37:07 23 Zoom, same way we are proceeding today, and you pled
11:37:07 24 guilty. Your plea was pursuant to a Rule 11(c)(1)(C)
11:37:07 25 plea agreement and requested that I impose a 24-month

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11:37:13 2 prison sentence. The deal was if I did not go along
11:37:15 3 with that, that you and the government could withdraw
11:37:20 4 from that plea agreement. As I indicated, I'm going to
11:37:23 5 accept that plea agreement.

11:37:24 6 Sentencing, Mr. Loria, is pursuant to the
11:37:26 7 Sentencing Reform Act of 1984. In deciding on a
11:37:29 8 reasonable and appropriate sentence, I have a
11:37:32 9 responsibility to impose a sentence that is considered
11:37:35 10 sufficient, but not greater than necessary to comply
11:37:40 11 with the objectives of sentencing set forth in 18 U.S.C.
11:37:44 12 Section 3553(a). Mr. Foti has raised certain objections
11:37:49 13 to the Presentence Investigation Report. He indicated
11:37:59 14 that he went over that report and there were certain
11:38:02 15 objections that I resolved, as I indicated on the
11:38:04 16 record, and, therefore, I'm going to adopt the
11:38:06 17 statements contained the Presentence Investigation
11:38:08 18 Report as my findings of fact.

11:38:10 19 Now, the Sentencing Guidelines are no longer
11:38:12 20 mandatory, they are advisory. But they are the first
11:38:15 21 step that I have to go through before I impose a
11:38:19 22 sentence. And I do find the calculations and
11:38:20 23 recommendations set forth in the Presentence
11:38:24 24 Investigation Report are correct. So what that means is
11:38:26 25 that pursuant to 2A6.2(a) of the Sentencing Guidelines,

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11:38:30 2 there is a base offense level here of 18. Because you
11:38:35 3 engaged in a pattern of stalking and harassing the
11:38:39 4 victim involving text messages, phone calls, physical
11:38:42 5 surveillance, there is a two-level increase to that base
11:38:46 6 offense level pursuant to 2A6.2(b)(1)(E). I do find you
11:38:53 7 accepted responsibility for your conduct, so pursuant to
11:38:59 8 the 3E1.1(a) and 3E1.1(b), I'm going to reduce the
11:39:00 9 offense level by three. So your total offense level is
11:39:03 10 a 17. Your criminal history, based on the criminal
11:39:06 11 history documented in the Presentence Investigation
11:39:09 12 Report, is a category II. So what that means is that
11:39:12 13 the Sentencing Guidelines, with an offense level of 17,
11:39:15 14 criminal history category of II, the Sentencing
11:39:19 15 Guidelines would recommend a prison sentence of 27 to 33
11:39:22 16 months, one to three years of supervised release, and a
11:39:25 17 fine of \$10,000 up to \$95,000.

11:39:29 18 Now, in addition to the Sentencing
11:39:31 19 Guidelines, I've also considered all of the other
11:39:33 20 factors set forth at 18 U.S.C. Section 3553(a) to
11:39:38 21 determine a sentence that is sufficient but not greater
11:39:40 22 than necessary to comply with the objectives of
11:39:43 23 sentencing set forth in that statute. I've considered
11:39:46 24 the nature and circumstances of your crime, your history
11:39:48 25 and characteristics. Your mental health issues are

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11:39:53 2 documented in the Presentence Investigation Report as
11:39:55 3 well as your attorney's filings on your behalf. And I
11:40:01 4 think they are clearly significant and there is no
11:40:03 5 question that some of your criminal history, and I think
11:40:07 6 conduct in this case, can be attributable to those
11:40:11 7 mental health issues. Your criminal history dates back
11:40:16 8 to the age of 12. You had your first felony conviction
11:40:20 9 after a trial back in October of 1988, but that was
11:40:24 10 reversed on appeal. So it looks as though the first
11:40:30 11 felony conviction that actually stuck, so to speak, was
11:40:33 12 in 1993. Your most recent criminal felony conviction
11:40:38 13 before this conviction was December of 2000 related to
11:40:45 14 drug trafficking crimes. You were sentenced to 5 to 10
11:40:48 15 years of prison. There were various violations of
11:40:50 16 parole before your parole expired in 2009. Disciplinary
11:40:57 17 infractions while you were incarcerated. Clearly you
11:41:00 18 look at your criminal history, it shows mental health
11:41:03 19 issues, but it also shows a disregard for the law. And
11:41:07 20 that is concerning because I do believe that unless you
11:41:14 21 keep up with your mental health treatment and take the
11:41:18 22 medication that you need and stay on top of that, you're
11:41:22 23 going to revert back to this history that you've had and
11:41:26 24 run into further problems with the criminal justice
11:41:30 25 system.

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11:41:31 2 I've considered -- you obviously have a very
11:41:34 3 supportive sister. And you're very fortunate to have
11:41:37 4 her involved in your life. No question about that.
11:41:41 5 I've considered the circumstances of this offense. I
11:41:48 6 mean, you read the victim impact statement, and it's
11:41:51 7 just devastating the impact that your conduct had on
11:41:55 8 this victim. But not just the victim, her whole family.
11:41:59 9 I mean, it included threatening her 10-year-old daughter
11:42:03 10 and that is just horrible conduct that, unfortunately,
11:42:07 11 is the type of criminal activity that has a lasting
11:42:12 12 impact on a victim. And I'm sure is going to take years
11:42:19 13 for her and her family to be able to get beyond this.
11:42:25 14 The conduct occurred over the course of two years from
11:42:30 15 June of 2017 to August of 2019. And, again, I credit
11:42:38 16 the fact that your mental health history contributed to
11:42:42 17 this. But that doesn't excuse the behavior. Because
11:42:45 18 we're all responsible for our own conduct. And to
11:42:53 19 engage in this kind of conduct with somebody who you
11:42:57 20 cared about at one point in time, and whose family you
11:43:00 21 cared about at one point in time, I just -- it's very
11:43:05 22 devastating and harmful. And it takes advantage of
11:43:09 23 people's vulnerability. And it takes advantage
11:43:12 24 particularly of women, I think, and their
11:43:17 25 vulnerabilities, and their feeling threatened, and they

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11:43:19 2 are feeling exposed and potentially subject to danger.
11:43:22 3 And I personally think that this five-year mandatory
11:43:30 4 maximum sentence is far too low for this type of crime.
11:43:34 5 I don't often say that. Usually my issues with
11:43:38 6 prescribed incarceration sentences and congressional
11:43:42 7 statutes is with mandatory minimums that require a
11:43:46 8 sentence at a particular level. I think sometimes those
11:43:49 9 are not appropriate. But five years, I don't think,
11:43:53 10 when you consider the type of harm that cyber stalking
11:43:57 11 can do, I don't think that is appropriate nor does it
11:44:01 12 reflect the harm that it can cause to society. And I
11:44:05 13 considered the need for the sentence imposed to reflect
11:44:07 14 the seriousness of the offense, promote respect for the
11:44:10 15 law, provide just punishment for the offense, afford
11:44:16 16 adequate deterrence, protect the public from any other
11:44:19 17 further crimes that you might commit. The need to
11:44:23 18 provide you with educational or vocational training,
11:44:25 19 medical care or other types of treatment in the most
11:44:28 20 effective manner as well as the kinds of sentences
11:44:32 21 available. The need to avoid unwarranted sentencing
11:44:35 22 disparities among defendants that have been found guilty
11:44:37 23 of similar conduct. Based on my consideration of all of
11:44:41 24 those factors, I do find that a 24-month prison
11:44:44 25 sentence, with a three year term of supervised release

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11:44:46 2 to follow, with at least six months of that supervised
11:44:50 3 release term you serving on home detention subject to
11:44:55 4 GPS monitoring, I find that is sufficient but not
11:44:58 5 greater than necessary to comply with the objectives of
11:45:02 6 sentencing set forth in the Sentencing Reform Act.

11:45:04 7 So, therefore, it's the judgment of the
11:45:06 8 Court, that you Theodore Loria, are hereby committed to
11:45:10 9 the custody of the Bureau of Prisons for 24 months. The
11:45:14 10 cost of the incarceration fee is waived. I'm going to
11:45:17 11 place you on supervised release for three years. You
11:45:19 12 must report to the probation office in the federal
11:45:21 13 judicial district where you are authorized to reside
11:45:25 14 within 72 hours of your release from prison unless the
11:45:28 15 probation officer instructs yo to report to a different
11:45:33 16 probation office or within a different time frame.
11:45:35 17 While on supervised release, you shall not commit
11:45:37 18 another federal, state or local crime and shall be
11:45:40 19 prohibited from possessing a firearm, ammunition or
11:45:42 20 other dangerous device. In addition, you shall not
11:45:46 21 possess a controlled substance, shall comply with the
11:45:48 22 standard conditions that have been adopted by this
11:45:51 23 Court, and shall comply with the following additional
11:45:54 24 conditions. You shall cooperate in the collection of a
11:45:57 25 DNA sample as required by the Justice for All Act of

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11:46:00 2 2004. Drug testing is required by the 1994 Crime
11:46:07 3 Control Act. I'm going to require that you participate
11:46:09 4 in a program for domestic violence pursuant to 18 U.S.C.
11:46:15 5 Section 3583(d). In addition you shall comply with the
11:46:19 6 conditions of home detention, which will be monitored by
11:46:22 7 a global positioning satellite system for a period of
11:46:27 8 six months. You shall wear and/or carry an electronic
11:46:32 9 monitoring device and follow monitoring procedures
11:46:36 10 specified by your probation officer as outlined in
11:46:39 11 probation form 61. You shall pay a portion or total
11:46:43 12 cost of GPS services at the daily rate provided by the
11:46:48 13 U.S. Probation office. And as we indicated, if after or
11:46:51 14 prior to the expiration of the six months, it is deemed
11:46:55 15 appropriate that that period should be extended, we
11:46:59 16 certainly can do that. You shall participate in a
11:47:01 17 mental health treatment program, including a mental
11:47:04 18 health evaluation and any treatment recommended. The
11:47:08 19 probation officer will supervise the details of any
11:47:12 20 testing and treatment, including the selection of a
11:47:14 21 provider and schedule. If inpatient treatment is
11:47:18 22 recommended, however, it must be approved by the Court
11:47:21 23 unless you consent. You're not to leave treatment until
11:47:25 24 complete or is ordered by the Court.

11:47:27 25 While in treatment or taking psychotropic

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11:47:30 2 medication, you shall abstain from the use of alcohol.
11:47:33 3 You're required to contribute to the cost of services
11:47:36 4 rendered. You shall submit to a search of your person,
11:47:39 5 property, vehicle, place of residence or any other
11:47:41 6 property under your control based upon reasonable
11:47:44 7 suspicion and permit confiscation of any evidence or
11:47:48 8 contraband discovered.

11:47:50 9 You shall not have any contact, directly or
11:47:53 10 indirectly with the victim MC, her family members or her
11:47:58 11 employment. You shall not use or possess any computer,
11:48:01 12 data storage device or any internet capable device
11:48:05 13 unless you participate in a computer and internet
11:48:08 14 monitoring program or unless authorized by the Court or
11:48:12 15 the U.S. Probation office. You must provide the U.S.
11:48:15 16 Probation office advance notification of any computer
11:48:18 17 automated services or connected devices that will be
11:48:22 18 used during the term of supervision. The U.S. Probation
11:48:26 19 office is authorized to install any application as
11:48:28 20 necessary to surveil all activity on computers or
11:48:37 21 connected devices owned or operated by you. You'll be
11:48:39 22 required to pay the cost of monitoring services. The
11:48:42 23 U.S. Probation Office shall be notified by electronic
11:48:46 24 transmission of impermissible, suspicious activity or
11:48:49 25 communications occurring on such computers or connected

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11:48:53 2 device consistent with the computer monitoring policy in
11:48:57 3 effect by the Probation office. As triggered by
11:48:58 4 impermissible suspicious activity, you shall consent to
11:49:07 5 and cooperate with unannounced examinations of any
11:49:08 6 computer equipment owned or used by you. This
11:49:11 7 examination shall include, but is not limited to,
11:49:14 8 retrieval and copying of all data from the computers,
11:49:18 9 connected devices, storage media and any internal or
11:49:22 10 external peripherals. And may involve removal of such
11:49:27 11 equipment for the purpose of conducting a more thorough
11:49:30 12 inspection. Any such monitoring or examinations shall
11:49:34 13 be designed to avoid, as much as possible, reading any
11:49:41 14 privileged information or any private material that is
11:49:43 15 not illegal or reasonably likely to lead to illegal
11:49:50 16 material or evidence related to illegal activity.

11:49:51 17 You shall provide the probation office with
11:49:53 18 access to any requested personal and/or business
11:49:56 19 financial information. The U.S. Probation office is
11:50:00 20 authorized to release presentence and post-sentence
11:50:03 21 financial information submitted by you to the U.S.
11:50:07 22 Attorney's Office for use in the collection of any
11:50:09 23 unpaid restitution. If while restitution is owed, you
11:50:13 24 shall notify the probation office of any assets
11:50:18 25 received. And shall not disperse your interest in any

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11:50:21 2 assets, included, but not limited to, income tax
11:50:24 3 refunds, inheritance, insurance and lawsuit settlements,
11:50:27 4 or gambling winnings without the approval of the U.S.
11:50:31 5 Probation office. While a restitution balance is
11:50:33 6 outstanding, you shall not incur any debt, including,
11:50:36 7 but not limited to, use of existing credit cards, new
11:50:40 8 credit cards, lines of credit, mortgages or private
11:50:42 9 loans without the approval of the U.S. Probation office.

11:50:46 10 Pursuant to 18 U.S.C. Section 3663(a) and
11:50:53 11 consistent with the stipulation, I'm ordering you to
11:50:56 12 make restitution to the victim MC in the amount of
11:51:02 13 \$8,249.70. That restitution is due immediately.
11:51:05 14 Interest is waived. While incarcerated, if you are
11:51:10 15 non-UNICOR or UNICOR grade five, you shall pay
11:51:13 16 installments of \$25 per quarter. If assigned grades one
11:51:18 17 through four in UNICOR, you shall make payments of 50
11:51:22 18 percent of your monthly pay. After considering the
11:51:24 19 factors set forth at 18 U.S.C. Section 3664(f)(2), while
11:51:30 20 on supervision, you shall make payments at the rate of
11:51:32 21 10 percent of your monthly gross income. In addition,
11:51:36 22 pursuant to 18 U.S.C. 3664(n), while obligated to
11:51:41 23 provide restitution, if you receive resources from any
11:51:45 24 source, including inheritance, settlement, insurance
11:51:49 25 lawsuit or other judgment during a period of

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11:51:54 2 incarceration, you're required to apply the value of
11:51:57 3 those resources to any outstanding restitution. I find
11:52:01 4 that you do not have the ability to pay a fine and
11:52:03 5 therefore any fine in this case is waived. You do have
11:52:06 6 to pay the mandatory \$100 special assessment. That is
11:52:09 7 due immediately. Payments shall be made under the
11:52:12 8 Bureau of Prisons Financial Responsibility Program and
11:52:14 9 made to the U.S. District Court in Buffalo, New York.

11:52:19 10 Now, you waive the right to appeal the
11:52:21 11 sentence that I just imposed, Mr. Loria, because it's
11:52:24 12 consistent with the terms of the plea agreement. But,
11:52:27 13 if you did want to attempt an appeal, you must file a
11:52:34 14 notice to appeal in within 14 days of the judgment is
11:52:39 15 entered in the case. And if you could not to afford an
11:52:43 16 appeal, you would have the right to proceed in forma
11:52:43 17 pauperis.

11:52:48 18 Ms. Marangola, does the government move to
11:52:51 19 dismiss the underlying Criminal Complaint?

11:52:53 20 MS. MARANGOLA: Yes, the government so
11:52:54 21 moves.

11:52:54 22 THE COURT: Any questions or requests, Mr.
11:52:57 23 Foti?

11:52:57 24 MR. FOTI: I have nothing, Judge.

11:52:59 25 THE COURT: Do you have any request in terms

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11:53:01 2 of where Mr. Loria is housed?

11:53:03 3 MR. FOTI: I would ask that it be the
11:53:06 4 lowest, that primarily, the primary concern would be
11:53:11 5 based on any classification.

11:53:15 6 THE COURT: I don't get involved with the
11:53:19 7 BOP classifications. If you have a request in terms of
11:53:25 8 geography, I'll make that.

11:53:26 9 MR. FOTI: I, ultimately, I would request
11:53:29 10 that he be located geographically as close to Rochester,
11:53:33 11 New York as possible. I only mention it because I never
11:53:36 12 want that to supersede a determination regarding level.
11:53:41 13 If there is a medium facility compared to a low
11:53:44 14 facility, obviously, geographic considerations I want to
11:53:49 15 be second.

11:53:50 16 THE COURT: So, you want me to make the
11:53:52 17 recommendation about geography or no?

11:53:56 18 MR. FOTI: Yes, I do.

11:53:57 19 THE COURT: Okay. So I'll make a
11:53:58 20 recommendation that Mr. Loria be housed in a facility as
11:54:01 21 close to Rochester, New York as possible.

11:54:05 22 Officer Fish, anything that I missed here?

11:54:08 23 PROBATION: Judge, nothing additional. I
11:54:10 24 just want to clarify one thing. With regard to the GPS
11:54:14 25 monitoring, does the Court want me to add that sentence

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11:54:16 2 at the end about extending it or we leaving that off and
11:54:20 3 addressing it in six months?

11:54:22 4 THE COURT: We don't have to put it in the
11:54:24 5 written judgment. We stated it on the record here and
11:54:27 6 if once he is under supervision, he still wants to
11:54:34 7 either have it extended or if probation believes it
11:54:36 8 should be extended then it can always be brought to my
11:54:39 9 attention. But we don't have to include it in the
11:54:42 10 written judgment.

11:54:45 11 PROBATION: Okay. Perfect. Nothing
11:54:46 12 further, Judge.

11:54:47 13 THE COURT: Good luck to you, Mr. Loria.

11:54:50 14 THE DEFENDANT: Can I address the housing
11:54:51 15 issue?

11:54:52 16 THE COURT: Sure, go ahead.

11:54:53 17 THE DEFENDANT: I would like to be put in
11:55:01 18 the Bureau of Prisons, Butner has a good mental health
11:55:04 19 and so does Allenwood. These are facilities under the
11:55:08 20 Bureau of Prisons that I researched that deal with
11:55:12 21 people with psychological problems.

11:55:14 22 THE COURT: So you specifically want me to
11:55:16 23 recommend that you be housed at Butner or Allenwood.

11:55:20 24 THE DEFENDANT: Yes, ma'am. Because, like I
11:55:22 25 said, they both in the guides they have special units

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11:55:27 2 there to address people's mental health issues.

11:55:31 3 THE COURT: Mr. Foti?

11:55:32 4 MR. FOTI: I apologize. I wasn't aware of
11:55:36 5 that. He may have mentioned that to me previously. To
11:55:39 6 the extent that his request, that makes sense to me. I
11:55:42 7 join in the request.

11:55:43 8 THE COURT: All right. Officer Fish, let's
11:55:45 9 make the recommendations the judgment that Mr. Loria be
11:55:49 10 housed either at Butner or Allenwood in order to take
11:55:52 11 advantage of any mental health services. All right.

11:56:01 12 Anything else, Mr. Loria?

11:56:02 13 THE DEFENDANT: No. Thank you, ma'am, very
11:56:04 14 much.

11:56:04 15 THE COURT: Good luck to you.

11:56:05 16 MR. FOTI: Thank you, Judge.

11:56:06 17 THE COURT: Thank you.

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19 CERTIFICATE OF REPORTER

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21 I certify that the foregoing is a correct transcript
22 of the record of proceedings in the above-entitled
23 matter.

24 S/ Karen J. Clark, RPR

25 Official Court Reporter

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